

Document 1

Filed 01/17/2008

Page 1 of 4

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

08 C 385

Case No.

JUDGE ST. EVE
MAGISTRATE JUDGE KEYS

Daniel K. Touhy
Touhy & Touhy, Ltd.
161 North Clark Street
Suite 2210
Chicago, IL 60661

1. On December 5, 2007, plaintiff filed a five-count complaint against Defendant in the Circuit Court of Cook County, Illinois County Department, Chancery Division, entitled *Shawn Holbrook v. Marriott International, Inc.* The case was designated Case No. 07 CH 35691. Defendant received notice of this action by service of the Complaint and Summons on December 19, 2008. Copies of the Complaint, Summons and Process served upon Defendant in this action are attached as Exhibit 1. These documents constitute all “process, pleadings, and orders” served upon Defendant in the state court action. 28 U.S.C. §1446(a).

2. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), because it is being filed within 30 days after Defendant's receipt of the Complaint. *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (named defendant's time to remove is triggered by actual service of complaint and summons).

3. Written notice of the filing of this Notice of Removal has been served upon Plaintiff, together with a copy of the Notice of Removal and supporting papers, and will be filed with the Clerk of the Circuit Court of Cook County, sitting in Cook County, Illinois, as required by 28 U.S.C. § 1446(d) on January 17, 2008.

4. Count five of Plaintiff's Complaint alleges that Defendant breached the Fair Labor Standards Act, 29 U.S.C. § 207(a) ("FLSA") by failing to properly compensate him and a class of similarly situated employees for all overtime hours worked in excess of forty (40). This claim arises under the laws of the United States under 28 U.S.C. § 1331 and may be removed to this Court under 28 U.S.C. §§ 1441(a) and (b). The other claims asserted in the Complaint—breach of contract, violations of the Illinois Wage Payment and Collection Act and Illinois Minimum Wage Law—similarly arise from Defendant's alleged failure to pay overtime wages. Therefore, the Court has supplemental jurisdiction over Plaintiff's state law claims. 28 U.S.C. § 1367(a).

5. This Court also has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 because it is "between citizens of different states," and the amount in controversy exceeds \$75,000.00, exclusive of costs and interest. Plaintiff alleges that he is a citizen of the State of Illinois. Marriott International, Inc. is a citizen of the states of Delaware and Maryland in that it is a corporation existing under the laws of the state of Delaware and has its principal place of business in the state of Maryland. While Plaintiff's Complaint does not specify an amount of

damages sought, if Marriott International, Inc. indeed failed to properly compensate “all employees of Marriott, its subsidiaries and affiliated companies who worked more than forty (40) hours in an individual work week,” damages will far exceed \$75,000. Thus, the amount in controversy exceeds \$75,000.00.

WHEREFORE, for the reasons stated above, case number No. 07 CH 35691 pending in the Circuit Court of Cook County, Illinois County Department, Chancery Division, is removed to this Court.

Respectfully submitted,

MARRIOTT INTERNATIONAL, INC.

By /s/ Colin M. Connor
One of Its Attorneys

Noah A. Finkel
Colin M. Connor
SEYFARTH SHAW LLP
131 S. Dearborn, Suite 2400
Chicago, Illinois 60603
Telephone: (312) 460-5000

January 17, 2008

CERTIFICATE OF SERVICE

I, Colin M. Connor, attorney for Defendant Pennant Foods Company, certify that I caused to be served upon Plaintiff a copy of Defendant's **Notice of Removal to the United States District Court** on January 17, 2008 via Federal Express from 131 S. Dearborn, Suite 2400, Chicago, IL 60603.

Terrence Buehler
Jeffrey J. Hallding
Buehler & Williams
161 North Clark Street
Suite 2210
Chicago, IL 60661

Daniel K. Touhy
Touhy & Touhy, Ltd.
161 North Clark Street
Suite 2210
Chicago, IL 60661

/s/ Colin M. Connor